

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

MAR 15 2007

JOHN F. CORCORAN, CLERK
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MICHAEL E. WRIGHT,) Civil Action No. 1:01cv00040
Plaintiff,)
) **MEMORANDUM OPINION**
v.)
)
MICHAEL J. ASTRUE,) By: GLEN M. WILLIAMS
Commissioner of Social Security,¹) SENIOR UNITED STATES DISTRICT JUDGE
Defendant.)

In this Social Security action, the court is asked to rule on a motion for an attorney's fee, (Docket Item No. 9), ("Motion"). Based on the reasoning set out below, the Motion will be denied.

Michael E. Wright filed this action challenging the final decision of the Commissioner of Social Security, ("Commissioner"), denying his claim for a period of disability and disability insurance benefits, ("DIB"), under the Social Security Act, as amended, ("Act"), 42 U.S.C.A § 423. (West 2003 & Supp. 2006). Jurisdiction of this court exists pursuant to 42 U.S.C. § 405(g). The Commissioner answered the suit, filing the administrative record. Thereafter, the court, by order entered September 13, 2001, vacated the Commissioner's decision denying benefits and remanded the case to the Commissioner. (Docket Item No. 8.) Wright's attorney now has filed a petition seeking approval of a fee of \$4,635.38 for representing Wright in this court. The Commissioner has responded that he does not object to the fee

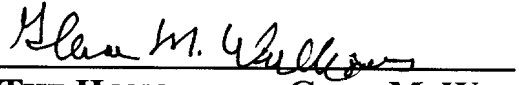
¹ Michael J. Astrue became the Commissioner of Social Security on February 12, 2007, and is, therefore, substituted for Jo Anne B. Barnhart as the defendant in this suit pursuant to Federal Rule of Civil Procedure 25(d)(1).

request. (Docket Item No. 11.) Based on a review of the Motion and the lack of attachments thereto, the court finds that the award of an attorney's fee on this record is inappropriate at this time.

This matter involved the appeal of an unfavorable decision by the Commissioner on the plaintiff's DIB claim filed on or about April 23, 2001. As stated above, the court's decision remanding these claims to the Commissioner was entered on September 13, 2001. There is no Notice of Award for Wright's DIB benefits attached to the Motion as required by this court. That being the case, the court has no evidence before it that there has been an administrative award of benefits on the claim remanded by this court. Therefore, an award of a fee is not appropriate at this time. *See Conner v. Gardner*, 381 F.2d 497, 500 (4th Cir. 1967) (court may award fee for work done before it on a DIB claim that was remanded, if, on remand, benefits are awarded on the claim).

For the foregoing reasons, the Motion will be denied without prejudice. An appropriate Judgment will be entered.

DATED: This 15 day of March, 2007.


THE HONORABLE GLEN M. WILLIAMS
SENIOR UNITED STATES DISTRICT JUDGE